

**JP3 Clause 5-1, Payments under Personal Services Procurements**

*As prescribed in 5.1.1f and 5.2.1o(3), insert the following clause in Section I of the solicitation and contract.*

**Payments under Personal Services Procurements (JAN 2003)**

- (a) The judiciary will pay the contractor for:
  - (1) the services performed by the contractor;
  - (2) as set forth in the schedule of this contract;
  - (3) at the rates prescribed;
  - (4) upon the submission by the contractor of proper invoices or time statements to the office or officer designated and at the time provided for in this contract.
- (b) The judiciary will also pay the contractor:
  - (1) a per diem rate in lieu of subsistence for each day the contractor is in a travel status away from home or regular place of employment in accordance with Judiciary Travel Regulations as authorized in appropriate Travel Orders; and
  - (2) any other transportation expenses if provided for in the schedule.

(end)

**JP3 Clause 5-5, Non-disclosure (Professional Services)**

*As prescribed in 5.2.1o(4), insert this clause in Section I of the solicitation and contract.*

**Non-disclosure (Professional Services) (JAN 2003)**

The contractor acknowledges that confidential information might be generated or made available during the course of performance of this agreement. In addition to the restrictions on disclosure established under the contractor's code of ethics, the contractor specifically agrees not to disclose any information received or generated under this contract, unless its release is approved in writing by the contracting officer. The contractor further agrees to assert any privilege allowed by law and to defend vigorously judiciary rights to confidentiality.

(end)

**JP3 Clause 5-10, Inspection of Professional Service**

*As prescribed in 5.2.1o(5), insert this clause in Section I of the solicitation and contract.*

**Inspection of Professional Service (JAN 2003)**

- (a) The contracting officer may, at any time or place, inspect the services performed and the products delivered, including documents and reports. The contracting officer may reject any products or services that do not meet the highest standards of professionalism, no matter what type of contract is employed, and in addition to any specific standards of quality set out in this agreement. No payment will be due for any products or services rejected under this clause.
- (b) Acceptance of any product or service does not relieve the contractor of the duties imposed by contractor's code of professional ethics. The contractor remains liable for the period allowed under federal law for claims by the United States, for any errors or omissions occurring during performance. All partners or principals agree that they will be jointly and severably liable for such errors and omissions.

(end)

**JP3 Clause 5-15, Invoices (Professional Services)**

*As prescribed in 5.2.1o(6), insert this clause in Section I of the solicitation and contract.*

**Invoices (Professional Services) (JAN 2003)**

- (a) In addition to the information required elsewhere in this agreement, all invoices for services under this agreement shall indicate in detail the following:
  - (1) person performing service each day by hour and part of an hour;
  - (2) services performed each day by hour and part of an hour.
  - (3) rates and charges for each service so detailed; and
  - (4) individual expenses charged, if allowed under this agreement.
- (b) Minimum charges for portions of an hour may be allowed, if such a charging practice has been disclosed before award of this agreement.

(end)

**JP3 Clause 5-20, Records Ownership**

*As prescribed in 5.2.1o(7), insert this clause in Section I of the solicitation and contract.*

**Records Ownership (JAN 2003)**

Notwithstanding any state law providing for retention of rights in the records, the contractor agrees that the judiciary may, at its option, demand and take without additional compensation all records relating to the services provided under this agreement. The contractor shall turn over all such records upon request but may retain copies of documents produced by the contractor.

(end)

**JP3 Provision 5-25, Identification of Uncompensated Overtime**

*As prescribed in 5.2.1o(8), insert this provision in Section L of the solicitation.*

**Identification of Uncompensated Overtime (JAN 2003)**

- (a) *Definitions* As used in this provision:  
"Uncompensated overtime" means the hours worked without additional compensation in excess of an average of 40 hours per week by direct charge employees who are exempt from the Fair Labor Standards Act. Compensated personal absences such as holidays, vacations, and sick leave shall be included in the normal work week for purposes of computing uncompensated overtime hours.  
"Uncompensated overtime rate" is the rate that results from multiplying the hourly rate for a 40-hour work week by 40, and then dividing by the proposed hours per week. For example, 45 hours proposed on a 40-hour work week basis at \$20 per hour would be converted to an uncompensated overtime rate of \$17.78 per hour ( $\$20.00 \times 40$  divided by 45 = \$17.78).
- (b) For any proposed hours against which an uncompensated overtime rate is applied, the offeror shall identify in its offer the hours in excess of an average of 40 hours per week, by labor category at the same level of detail as compensated hours, and the uncompensated overtime rate per hour, whether at the prime or subcontract level. This includes uncompensated overtime hours that are in indirect cost pools for personnel whose regular hours are normally charged direct.
- (c) The offeror's accounting practices used to estimate uncompensated overtime shall be consistent with its cost accounting practices used to accumulate and report uncompensated overtime hours.

- (d) Offers that include unrealistically low labor rates, or that do not otherwise demonstrate cost realism, will be considered in a risk assessment and will be evaluated for award in accordance with that assessment.
  - (e) The offeror shall include a copy of its policy addressing uncompensated overtime with its offer.
- (end)

### **JP3 Clause 5-30, Authorization and Consent**

*As prescribed in 5.3.7g(1), insert this clause in Section I of solicitations and contracts.*

#### **Authorization and Consent (JAN 2003)**

- (a) The judiciary authorizes and consents to all use and manufacture, in performing this contract or any subcontract at any tier, of any invention described in and covered by a United States patent (1) embodied in the structure or composition of any article the delivery of which is accepted by the judiciary under this contract or (2) used in machinery, tools, or methods whose use necessarily results from compliance by the contractor or a subcontractor with (i) specifications or written provisions forming a part of this contract or (ii) specific written instructions given by the contracting officer directing the manner of performance. The entire liability to the judiciary for infringement of a patent of the United States will be determined solely by the provisions of the indemnity clause, if any, included in this contract or any subcontract hereunder (including any lower-tier subcontract), and the judiciary assumes liability for all other infringement to the extent of the authorization and consent herein above granted.
- (b) The contractor agrees to include, and require inclusion of, this clause, suitably modified to identify the parties, in all subcontracts at any tier for products or services (including construction, architect-engineer services, and materials, products, models, samples, and design or testing services expected to exceed the judiciary's small purchase threshold); however, omission of this clause from any subcontract, including those at or below the judiciary's small purchase threshold, does not affect this authorization and consent.

#### **Alternate I** *The following is substituted for paragraph (a) of the clause:*

- (a) The judiciary authorizes and consents to all use and manufacture of any invention described in and covered by a United States patent in the performance of this contract or any subcontract at any tier.

#### **Alternate II** *The following is substituted for paragraph (a) of the clause:*

- (a) The judiciary authorizes and consents to all use and manufacture in the performance of any order at any tier or subcontract at any tier placed under this contract for communication

services and facilities for which rates, charges, and tariffs are not established by a judiciary regulatory body, of any invention described in and covered by a United States patent:

- (1) embodied in the structure or composition of any article the delivery of which is accepted by the judiciary under this contract; or
- (2) used in machinery, tools, or methods whose use necessarily results from compliance by the contractor or a subcontractor with specifications or written provisions forming a part of this contract or with specific written instructions given by the contracting officer directing the manner of performance.

(end)

### **JP3 Clause 5-35, Payments Under Fixed-Price Architect-Engineer Contracts**

*As prescribed in 5.3.7g(2), insert this clause in Section I of solicitations and contracts.*

#### **Payments under Fixed-Price Architect-Engineer Contracts (JAN 2003)**

- (a) Estimates shall be made monthly of the amount and value of the work and services performed by the contractor under this contract which meet the standards of quality established under this contract. The estimates shall be prepared by the contractor and accompanied by any supporting data required by the contracting officer.
- (b) Upon written approval of the estimate by the contracting officer, payment upon properly executed vouchers will be made to the contractor, as soon as practicable, of 90 percent of the written approved amount, less all previous payments; *provided*, that payment may be made in full during any months in which the contracting officer determines that performance has been satisfactory. Also, whenever the contracting officer determines that the work is substantially complete and that the amount retained is in excess of the amount adequate for the protection of the judiciary, the contracting officer may release the excess amount to the contractor.
- (c) Upon satisfactory completion by the contractor and acceptance by the contracting officer of the work done by the contractor under the "Statement of Architect-Engineer Services," the contractor will be paid the unpaid balance of any money due for work under the statement, including retained percentages relating to this portion of the work. Upon satisfactory completion and final acceptance of the construction work, the contractor shall be paid any unpaid balance of money due under this contract.
- (d) Before final payment under the contract, or before settlement upon termination of the contract, and as a condition precedent thereto, the contractor shall execute and deliver to the contracting officer a release of all claims against the judiciary arising under or by virtue of this contract, other than any claims that are specifically excepted by the contractor from the operation of the release in amounts stated in the release.
- (e) Notwithstanding any other provision in this contract, and specifically paragraph (b) of this clause, progress payments will not exceed 80 percent on work accomplished on undefinitized

contract actions. A "contract action" is any action resulting in a contract including contract modifications for additional products or services, but not including contract modifications that are within the scope and under the terms of the contract, such as contract modifications issued pursuant to the Changes clause, or funding and other administrative changes.

(end)

### **JP3 Clause 5-40, Permits and Responsibilities (Services)**

*As prescribed in 5.3.7g(3), insert this clause in Section I of solicitations and contracts.*

#### **Permits and Responsibilities (Services) (JAN 2003)**

The contractor shall be responsible, without additional expense to the judiciary, for obtaining any necessary licenses and permits, and for complying with any applicable federal, state, and municipal laws, codes, and regulations applicable to the performance of the work. The contractor shall also be responsible for all damages to persons or property that occur as a result of the contractor's fault or negligence. The contractor shall also be responsible for all materials delivered and work performed until completion and acceptance of the entire work, except for any completed unit of work which may have been accepted under the contract.

(end)

### **JP3 Clause 5-45, Design Within Funding Limitations**

*As prescribed in 5.3.7g(4), insert this clause in Section I of solicitations and contracts. The contracting officer will fill in the dollar amount in (c).*

#### **Design Within Funding Limitations (JAN 2003)**

- (a) The contractor shall accomplish the design services required under this contract so as to permit the award of a contract, using standard judiciary procedures for the construction of the facilities designed at a price that does not exceed the estimated construction contract price as set forth in paragraph (c) of this clause. When offers for the construction contract are received that exceed the estimated price, the contractor shall perform such redesign and other services as are necessary to permit contract award within the funding limitation. These additional services shall be performed at no increase in the price of this contract. However, the contractor shall not be required to perform such additional services at no cost to the judiciary if the unfavorable offers are the result of conditions beyond its reasonable control.
- (b) The contractor will promptly advise the contracting officer if it finds that the project being designed will exceed or is likely to exceed the funding limitations and it is unable to design a usable facility within these limitations. Upon receipt of such information, the contracting officer

will review the contractor's revised estimate of construction cost. The judiciary may, if it determines that the estimated construction contract price set forth in this contract is so low that award of a construction contract not in excess of such estimate is improbable, authorize a change in scope or materials as required to reduce the estimated construction cost to an amount within the estimated construction contract price set forth in paragraph (c) of this clause, or the judiciary may adjust such estimated construction contract price. When offers are not solicited or are unreasonably delayed, the judiciary will prepare an estimate of constructing the design submitted and such estimate will be used in lieu of offers to determine compliance with the funding limitation.

- (c) The estimated construction contract price for the project described in this contract is \$\_\_\_\_\_.  
(end)

### **JP3 Clause 5-50, Responsibility of the Architect-Engineer Contractor**

*As prescribed in 5.3.7g(5), insert this clause in Section I of solicitations and contracts.*

#### **Responsibility of the Architect-Engineer Contractor (JAN 2003)**

- (a) The contractor shall be responsible for the professional quality, technical accuracy, and the coordination of all designs, drawings, specifications, and other services furnished by the contractor under this contract. The contractor shall, without additional compensation, correct or revise any errors or deficiencies in its designs, drawings, specifications, and other services.
- (b) Neither the judiciary's review, approval or acceptance of, nor payment for, the services required under this contract will be construed to operate as a waiver of any rights under this contract or of any cause of action arising out of the performance of this contract, and the contractor shall be and remain liable to the judiciary in accordance with applicable law for all damages to the judiciary caused by the contractor's negligent performance of any of the services furnished under this contract.
- (c) The rights and remedies of the judiciary provided for under this contract are in addition to any other rights and remedies provided by law.
- (d) If the contractor is comprised of more than one legal entity, each such entity shall be jointly and severally liable hereunder.

(end)

### **JP3 Clause 5-55, Work Oversight in Architect-Engineer Contracts**

*As prescribed in 5.3.7g(6), insert this clause in Section I of solicitations and contracts.*

#### **Work Oversight in Architect-Engineer Contracts (JAN 2003)**

The extent and character of the work to be done by the contractor shall be subject to the general oversight, supervision, direction, control, and written approval of the contracting officer.  
(end)

### **JP3 Clause 5-60, Requirements for Registration of Designers**

*As prescribed in 5.3.7g(7), insert this clause in Section I of solicitations and contracts.*

#### **Requirements for Registration of Designers (JUNE 2003)**

Architects or engineers registered to practice in the particular professional field involved in a state, the District of Columbia, or an outlying area of the United States shall prepare or review and approve the design of architectural, structural, mechanical, electrical, civil, or other engineering features of the work

(end)

### **JP3 Clause 5-65, Subcontractors and Outside Associates and Consultants (Architect-Engineer Services)**

*As prescribed in 5.3.7g(8), insert this clause in Section I of solicitations and contracts.*

#### **Subcontractors and Outside Associates and Consultants (Architect-Engineer Services) (JAN 2003)**

Any subcontractors and outside associates or consultants required by the contractor in connection with the services covered by the contract will be limited to individuals or firms that were specifically identified and agreed to during negotiations. The contractor shall obtain the contracting officer's written consent before making any substitution for these subcontractors, associates, or consultants.

(end)

### **JP3 Clause 5-70, Termination (Fixed-Price Architect-Engineer)**

*As prescribed in 5.3.7g(9), insert this clause in Section I of solicitations and contracts.*

#### **Termination (Fixed-Price Architect-Engineer) (JAN 2003)**

- (a) The judiciary may terminate this contract in whole or, from time to time, in part, for the judiciary's convenience or because of the failure of the contractor to fulfill the contract obligations. The contracting officer will terminate by delivering to the contractor a Notice of



Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the contractor shall:

- (1) immediately discontinue all services affected (unless the notice directs otherwise); and
  - (2) deliver to the contracting officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process.
- (b) If the termination is for the convenience of the judiciary, the contracting officer will make an equitable adjustment in the contract price but will allow no anticipated profit on unperformed services.
  - (c) If the termination is for failure of the contractor to fulfill the contract obligations, the judiciary may complete the work by contract or otherwise and the contractor shall be liable for any additional cost incurred by the judiciary.
  - (d) If, after termination for failure to fulfill contract obligations, it is determined that the contractor had not failed, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the judiciary.
  - (e) The rights and remedies of the judiciary provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

(end)

### **JP3 Clause 5-75, Suspensions and Delays**

*As prescribed in 5.3.7g(10), insert this clause in Section F of solicitations and contracts.*

#### **Suspensions and Delays (JAN 2003)**

- (a) If the performance of all or any part of the work of this contract is suspended, delayed, or interrupted by:
  - (1) an order or act of the contracting officer in administering this contract; or
  - (2) by a failure of the contracting officer to act within the time specified in this contract, or within a reasonable time if not specified, an adjustment will be made for any increase in the cost of performance of this contract caused by the delay or interruption (including the costs incurred during any suspension or interruption). An adjustment will also be made in the delivery or performance dates and any other contractual term or condition affected by the suspension, delay, or interruption. However, no adjustment may be made under this clause for any delay or interruption to the extent that performance would have been delayed or interrupted by any other cause, including the fault or negligence of the contractor, or for which an adjustment is provided or excluded under any other term or condition of this contract.
- (b) A claim under this clause will not be allowed:

- (1) for any costs incurred more than 20 days before the contractor has notified the contracting officer in writing of the act or failure to act involved; and
- (2) unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of the delay or interruption, but not later than the day of final payment under the contract.

(end)